through a limited number of narrow channels.[35/] In effect, efficiency has been fostered by the Commission's conservative approach of licensing paging carriers for only one narrow paging channel at a time.

27. This fact calls into question the suggestion at paragraph 52 of the Notice that the Commission is considering licensing narrowband PCS spectrum in minimum blocks of 250 kHz or 1 MHz. PacTel submits that this would be spectrally inefficient and preclusionary and would completely ignore the substantial research that already has gone into the development of the next generation of messaging services.[36/] The industry standard bandwidth for both common carrier and private carrier paging channels today is 25 kHz. It is not surprising, therefore, that the focus of developmental efforts for the next generation of services has mainly been upon improved technologies using this bandwidth. Nine of the thirteen proposals for pioneer's preferences for narrowband PCS services propose individual channel bandwidths of 25 kHz.[37/] Whether or not these proposals

---

[35/] For instance, this is where TTL's experimentation has been focused. In addition, traditional paging required the signal be simulcast, thus requiring faster data rates rather than trunking channels.

[36/] In addition, bandwidths of this size would have a preclusionary effect on the number of licensees. As stated earlier, one goal of the Commission should be to maximize the opportunities for serious operators to secure licenses for their service.

[37/] Though the total spectrum requested per licensee varies, the individual channel bandwidths which form the basis of each (continued...)

are accorded preferences[38], they indicate that there is substantial industry interest in services with bandwidths of a magnitude in this general range.

28. Of course, some of the proposed services -- like MTel's -- have bandwidth requirements greater than 25 kHz.[39] PacTel recognizes that larger bandwidths may make more sense for some system designs.[40] For example, even if the frequency utilization does not go up, the cost of equipment may go down

---

[37](...continued)
preference proposal are as follows: Dial Page, L.P. - 25 kHz; Echo Group, L.P. - 5 kHz; Global Enhanced Messaging Venture - 25 kHz; Metriplex, Inc. - 25 kHz; Mobile Communications Corp. of America - 50 kHz; Montauk Telecommunications Co. - 25 kHz; PacTel Paging (Advanced Architecture Paging) - 25/50 kHz; PacTel Paging (Ground-to-Air Paging) - 25 kHz; PageMart - 25 kHz; Paging Network, Inc. - 25 kHz; and Skycell Corp. - 25 kHz.

[38] PacTel contends that the decision of the Commission to deny all but one of the narrowband PCS preference requests risks stifling the beneficial research and development of advanced messaging services that has been undertaken by a broad cross-section of industry participants. Consequently, PacTel recommends that the Commission take a hard look at the various requests for reconsideration that have been filed to make sure that all who have advanced the state of the art are properly rewarded with licensing preferences.

[39] Notably, PacTel did not automatically assume that 25 kHz was the only appropriate bandwidth for advanced messaging services when it commenced its own experimentation. Rather, it tested the use of a 50 kHz channel to determine whether this increased bandwidth could be utilized in a manner resulting in a greater than 2 to 1 increase in capacity. See Progress Report, April 1992, filed with reference to FCC File Nos. 1658 through 1662-EX-PL-90.

[40] Notably, however, all of the narrowband preference applicants seek spectrum which is a multiple of 25 kHz. For example, PageNet and PageMart each seek a 250 kHz allocation to accommodate ten 25 kHz channels deployed in a frequency reuse pattern.

significantly if more bandwidth is available and operating tolerances need not be as high. Furthermore, it is axiomatic that the greater bandwidth will support the throughput of more bits of information which may be necessary to accommodate some information intensive services (e.g., facsimile, high resolution graphics, video, etc.). In PacTel's view, however, 100 kHz bandwidth is the most that would be needed for narrowband PCS services. Those requiring greater than 100 kHz should look to the 2 GHz wideband allocation.

29. PacTel supports, therefore, a channelization plan that offers a variety of channel sizes ranging from 25 kHz to 100 kHz which are multiples of 25 kHz.[41/] This building block approach adds flexibility to the allocation, while retaining a correlation to the 25 kHz channelization that has served the industry so well and is the focus of developmental programs.[42/] This approach also will create meaningful licensing opportunities for some if not all of the parties who have devoted substantial attention to developing proposals for this band.

41/ Some of the pioneer's preference applicants have proposed simulcast system architectures, while others have proposed frequency reuse architectures. The Commission should not mandate any particular architecture for any of these channels, nor should it preclude any architecture. The best result is to let the market decide which architecture makes sense.

42/ This approach will have the incidental benefit of encouraging the migration of advanced technologies to previously licensed common carrier and private carrier bands which have compatible channelization.

C. Ramifications of Applying The Paging Model.

30. The foregoing discussion demonstrates that the paging industry provides an apt model for adopting a licensing scheme for narrowband PCS. The lessons to be learned from the paging industry also are very relevant to the licensing of narrowband PCS. What, then, are the ramifications of this analysis? And, how does the applicability of the paging model affect the four basic values of universality, speed of deployment, diversity of services and competitive delivery that the Commission is attempting to optimize and balance?

1. Universality

31. Two essential elements must be incorporated into the narrowband PCS licensing plan to foster universal service. First, the minimum geographic service territories accorded to each licensee must be sufficiently large to approximate the natural serving areas that will emerge in the marketplace. As stated above, PacTel has concluded that a regional plan which consolidates five large MTAs into geographic service territories is necessary to accomplish this objective.

32. Second, the Commission must adopt a rational channelization plan that will enable manufacturers to mass produce equipment which will be put to common uses in common

portions of the 900 MHz spectrum in order to reduce prices to carriers and, ultimately, to end users.[43/]

2. Speed of Deployment

33. There is a series of steps the Commission can take in this proceeding to encourage the prompt deployment of narrowband PCS services. At the outset, the narrowband PCS portion of the proceeding should be expedited if it becomes delayed by the wideband PCS issues. In particular, the 900 MHz allocation should not be delayed by the issues which affect only the 2 GHz allocation. All three of the 1 MHz blocks of spectrum in the 900 MHz band that are under consideration for narrowband PCS are now being held in reserve and have no current licensees. Consequently, the allocation of these frequencies does not raise the difficult issues regarding spectrum clearing and coordination with incumbent licensees that are squarely raised in the 2 GHz proceeding.[44/]

[43/] A subsidiary benefit will be to allow existing licensees to refarm their current spectrum by migrating this new technology into those frequencies.

[44/] See Redevelopment of Spectrum to Encourage Innovation in the Use Of New Telecommunications Technologies, ET Docket No. 92-9, 57 Fed. Reg. 49020 (October 29, 1992). The Commission has recognized this fact, and has indicated an intention to segregate the 900 MHz allocation for expedited resolution if the PCS timetable generally starts to slip. Notice, para. 11.

34. The licensing scheme which is ultimately adopted should be manageable and capable of resulting in the actual granting of licenses to serious operators in a reasonable time frame. In licensing the narrowband PCS spectrum, the Commission should not experiment with untried applicant selection techniques that are likely to foster legal challenges and uncertainty and raise a greater risk of unintended consequences.

35. At the same time, the licensing scheme must include measures to deter the inundation of the Commission with huge numbers of applications by insincere applicants. The mechanisms proposed by PacTel to deter speculation are discussed in detail in Section III below. As more fully outlined below, PacTel favors a licensing scheme that will require applicants to make detailed legal, technical, financial and other showings sufficient to demonstrate their licensee qualifications and a seriousness of intent to construct and operate the systems which are proposed. PacTel also recommends the adoption of an application fee structure and forfeiture bond requirements that will discourage purely speculative applicants who have no bona fide intention of providing narrowband PCS service.

36. The final area in which the licensing scheme can foster the rapid deployment of services is by incorporating technical standards and channelization plans for some of the narrowband PCS services similar to those which have applied to traditional paging services, thereby enabling licensees to garner the maximum benefit from previous experience and ongoing

developmental work. Consequently, PacTel resoundingly supports the Commission's proposal to adopt height and power limits derived from Part 22 of the existing rules. See Notice, paras. 125-129. This approach, coupled with realistic construction deadlines, will foster the rapid deployment of narrowband PCS services throughout the licensed territories.

3. Diversity of Services.

37. Diversity of services can be encouraged in the narrowband PCS services by establishing a channelization plan which includes a variety of individual channel bandwidths, and a variety of pairing arrangements, so that licensees are free to provide any of a number of possible advanced services. The PacTel channelization plan accomplishes these objectives. See Attachment 2.

38. Diversity can also be fostered by encouraging the participation of the broadest possible cross-section of industry participants and not establishing eligibility restrictions. The competitive issues that the Commission discusses in its Notice respecting the eligibility of incumbent cellular licensees and local exchange carriers for PCS spectrum apply, if at all, only to wideband PCS.[45/]

[45/] As an affiliate of both a cellular carrier and an LEC, PacTel is particularly concerned that the discussion of possible restrictions on PCS eligibility were not (continued...)

39. Diversity of services also will be encouraged if the channel plan ultimately adopted avoids licensing all channels in nationwide regions. PacTel is concerned about the preclusive effect of granting a licensee the entire nation as its service area for any of the narrowband PCS channels. Devoting the entire 900 MHz allocation to nationwide licenses will reduce the licensing opportunities for strong proponents of advanced messaging services like PacTel.[46/] As a general matter, when two competitors are licensed in different geographic bases, the larger geographic licensee will enjoy inherent competitive advantages which will cause the industry to suffer from a lack of robust competition. PacTel believes that there may be a need for nationwide service, but that need can be met by either allowing applicants to apply for all of the regions, or by licensees interconnecting their systems through intercarrier operating agreements.

40. PacTel's regional licensing plan strikes an appropriate balance between these competing considerations. The proposed number of regions (five) is small enough to permit the

---

[45/](...continued)
specifically limited to the wideband PCS proposal. The paging industry has become and remains very competitive without eligibility restrictions. The narrowband PCS industry will as well.

[46/] There is no doubt that some demand exists for purely nationwide service. However, the real benefit to nationwide licensing is the fact that the licensees can engineer and build their systems without having to seek additional licenses from the Commission. A regional license accords licensees the same benefit albeit on a smaller scale.

aggregation of adjoining service territories if the market indeed demands further nationwide services. The number also is small enough to enable carriers to negotiate without too much trouble intercarrier service agreements which would allow the delivery of messages over the facilities of carriers in adjoining territories. Nationwide services will indeed emerge if subscribers demand this service.

4. Competitive Delivery.

41. Competition in narrowband PCS services is best accomplished by adopting a channel plan that creates numerous opportunities for the provision of competitive services. This requires allocating channels such that the number of licenses is not severely limited. Competition is also encouraged by the absence of eligibility restrictions that otherwise would limit the number and diversity of potential industry participants. Finally, competition is encouraged by the adoption of geographic service areas which are sufficiently large to permit new entrants to the messaging market to establish service over broad geographic areas which are necessary to compete with regional systems that already have developed in the marketplace, but small enough to create enough licensing opportunities to permit serious operators to secure licenses. All of these objectives are served by the PacTel licensing plan.

D. Avoiding Mistakes.

42. No allocation plan or licensing scheme is perfect. The goal is to adopt a workable scheme in a reasonable time frame, and thereafter to allow the marketplace, rather than the Commission, to sort out and refine the services that are to be delivered and accepted by the public. The simple objective, therefore, is to rough hew a licensing process and, in the process, avoid serious mistakes that stifle the evolution of needed services.

43. The question has been posed by Commission staff to PacTel asking what would be serious mistakes with respect to the narrowband PCS allocation? In PacTel's view, the Commission will make serious mistakes if it grants (a) channels in excess of 100 kHz of bandwidth[47/] (b) to too few licensees[48/] (c) under a licensing scheme that fails to deter speculation by insincere applicants.[49/] Mistakes of this nature will deprive serious members of the industry who have devoted their attention to the development of the next generation of messaging services from any

---

47/ As stated earlier, grants in excess of 100 kHz will have a preclusionary effect on the opportunities for serious operators to secure licenses.

48/ PacTel believes that the ultimate band plan should encourage competition by creating many channels.

49/ See Section III.

meaningful licensing opportunity.[50] Notably, an industry consensus appears to be forming on many of these aspects of the licensing scheme.[51]

---

[50] The Notice makes occasional references to mistakes the Commission made in licensing cellular systems (e.g., too small service areas, too few competitors). One success worth noting, however, is the manner in which the licensing scheme, which created meaningful licensing opportunities for existing industry participants, has resulted in the rapid deployment of high quality services. That goal is worthy and should be promoted in the licensing of narrowband PCS services.

[51] In a series of meetings with various proponents of narrowband PCS, the following consensus positions on PCS licensing issues evolved to which PacTel subscribes: (a) applicants must propose advanced messaging services for the narrowband PCS band; (b) applicants may apply for varying amounts of spectrum with proportionately greater fees associated with greater bandwidth; (c) establishment of regional (e.g., three to five geographic areas) or national licenses, but not local licenses; (d) diverse technologies eligible for 930 and/or 940 MHz; (e) reservation of 901 MHz band for low power mobile to base communications, paired with one or more 25 kHz channels in AMS, or other paging services; (f) applications must contain specificity as to the type of service proposed, including the number of frequencies required to provide such service; (g) the Commission must establish substantial "sincerity" requirements to deter speculation; (h) provisions for the forfeiture of licenses for failure to timely complete construction and for the forfeiture of spectrum in the case of a material variance in the spectrum uses and/or requirements of the grantee; and (i) applicants must promptly implement the system configurations and channel plans they propose throughout the applicable service territory.

III. The Licensing Scheme Must Include Forceful Mechanisms to Avoid Speculation

44. The Notice recognizes the extent to which the Commission's past procedures for allocating spectrum for new technologies have encouraged speculation resulting in a flood of applications by insincere applicants.[52] PacTel shares the Commission's concern that the PCS allocation, including the narrowband allocation, will be rife with speculation unless the licensing mechanism incorporates bold measures to avoid this result.

45. PacTel's concern derives from several sources. First, and foremost, recent experiences involving various narrowband allocations give cause for alarm. For example, when one of the three designated nationwide common carrier 931 MHz paging frequencies was relotteried in 1989 after the initial licensee relinquished the authorization, the Commission received 1,692 applications.[53] Worse yet, the issuance by lottery of narrowband messaging licenses in the 220 to 222 MHz band drew close to 60,000 applications.[54] The reason for the flood of

---

[52] See Notice, para. 88. See also Amendment of Part 90 of the Rules to Provide for the Use of 220-222 MHz, 7 FCC Rcd. 4484 at para. 7 and n. 1 (1992).

[53] See Public Notice, Mimeo No. 4090, released August 17, 1989.

[54] The Private Radio Bureau received 57,500 applications for this service. 220 MHz Applications Number Less Than 60,000, not 100,000, But Auction Fever Continues, Industrial Communications, June 28, 1991, at 5. Many in the Commission (continued...)

applications is clear. A cottage industry has grown up by which application preparers hawk applications for spectrum as "get rich quick" schemes. By mass marketing identical applications to multiple applicants, these application mills are able to get the costs of the application down very low while reaping huge returns on their efforts. There is absolutely no reason to suspect that this approach will be abandoned with respect to narrowband PCS filings.

46. In fact, there would appear to be a greater risk of speculation with respect to narrowband PCS than wideband PCS. If, as the Commission has suggested, the narrowband PCS allocation is severed from the consolidated proceeding and resolved on an expedited basis, the narrowband licenses may be the first PCS licenses made available to the public. In view of the substantial attention that has been paid in the media and the trade press to PCS generally as the next generation of communications services, there could well be a veritable land rush as speculators vie for this "electronic real estate".[55/]

[54/](...continued)
also recognized that speculation occurred. See, e.g., Comments by Ralph Haller, Chief, Private Radio Bureau, Id. at 5 ("I still know that the [application] mills geared up and many of the applicants saw it as a gold rush. There will be a lot of licenses given to those [applicants] who have no intention of building a system -- just selling it.")

[55/] The Commission recently experienced significant speculation for other services such as IVDS, which were not even given the amount of attention PCS has received.

47. PacTel's concern is exacerbated by the Notice which gives serious consideration to the possibility of requiring lottery applications to contain "only minimal information" resulting in a "postcard lottery". Notice, at para. 85. Reducing the paperwork and substantive processing standards plays directly into the hands of the application mills which must be able to mass produce boilerplate applications in order for their filing approach to hold the promise of making money.

48. PacTel urges the Commission to require substantial information from narrowband PCS applicants. The experience with the 220 to 222 MHz filings shows that postcard lottery approaches do not work. In PacTel's view, the Commission should take exactly the opposite approach and adopt a broad array of substantive threshold requirements to deter insincere applicants, as follows:

A. Detailed Technical Showings.

49. The Commission can drastically reduce the number of applications that are filed for narrowband PCS authorizations by adopting relatively large geographic regions and requiring each applicant to submit a detailed technical plan that describes the proposed service and provides specific engineering covering a large percentage of the area and/or population that will be

served in the initial license period.[56] Applicants should not be allowed to stake out an entire geographic area by making a minimal technical showing with transmissions from isolated locations.[57]

50. A critical component of the technical showing must be the requirement to identify and secure access to specific transmitter site locations. The proposal at paragraph 93 of the Notice, that applicants initially not be required to specify antenna sites for each base station, is headed in the wrong direction. Requiring an applicant to identify and secure access to a sufficient number of specific sites to cover most of a region would make applicants (or their application preparers) undertake a level of review of the market and prepare a technical plan sufficient to evidence a seriousness of intention.[58]

51. The Commission also should resurrect an earlier possibility it explored to require unique technical showings. Speculation is fueled when applicants are allowed to submit

---

[56] In PacTel's view, the 75% coverage rule adopted in the cellular arena has worked quite well. See, e.g., FCC Rules, Section 22.903(a)(1).

[57] This was a problem in the licensing of cellular RSA's when the population standards could often be met with a single cell site, and applicants had no incentive on the front end to engineer more complete systems. An applicant should be required for initial application purposes to cover a minimum of 50% of the geographic area even if 75% of the population could be covered in a lesser area.

[58] See, e.g., Roberts Cellular, Inc., 5 FCC Rcd. 1357 (Mob. Serv. Div. 1990)(multiple boilerplate applications from residents of Crossville, Tennessee dismissed for failure to secure reasonable assurance of access to specified sites).

identical "boilerplate" applications.[59/] Candidly, PacTel would rather pay more money to prepare its "unique" application and have a greater chance of securing a channel than have the Commission adopt minimal technical standards (or none at all) which will cause a multitude of inexpensive boilerplate proposals by speculators and application mills, which will in turn decrease the chance that a serious applicant will be selected in a lottery.

B. Financial Qualifications

52. As earlier noted, financial qualifications present a meaningful basis for determining likelihood of success in the narrowband PCS business. See discussion supra at Section II. B. 3. Adopting stringent financial qualifications also can serve to weed out applicants who are participating in the process solely for speculative purposes.

53. In designing the financial requirement, the licensing plan should require applicants to demonstrate their financial ability to construct and operate the entire proposed system throughout the first 3 years of operation of the system, not merely the start-up system. The Commission should not repeat

---

[59/] Proposals could be deemed "identical" if they proposed identical sites. With broad geographic regions and significant coverage requirements, the possibility of such concurrence by accident would be remote because a large number of sites would be involved.

the cellular RSA experience where the vast majority of applicants made only minimal technical showings and, as a result, were often required to demonstrate the ability to construct only a skeletal one-cell system. In narrowband PCS, the requirement for a detailed technical plan calling for the coverage of a significant percentage of the area and/or population must be coupled with a complete financial plan detailing sources of funds throughout the first three years of operation.

54. The licensing plan should also strengthen the financial showing requirements in other respects as well. The Commission earlier backed off from proposals which would have required cellular applicants to demonstrate that funds were actually on hand, or subject to a formal loan commitment as a condition to receiving a license.[60/] The reason for relaxing the requirement was fear that so stringent a standard would add application costs to the process and, potentially, serve to weed out desirable applicants. Again, PacTel considers it to be the lesser of two evils for a very small number of qualified applicants to be weeded out than for a very large number of insincere applicants to be allowed in.[61/] The Commission must be

---

60/ See Amendment of the Commission's Rules for Rural Cellular Service (Fourth Report and Order), 4 FCC Rcd. 4464 at para. 2, 6 (1989).

61/ The Commission could also establish procedures which would allow other policy goals of the Commission to be met by persons who may not be able to meet these strict requirements -- such as minority and female owned enterprises. The Commission could allow these applicants to produce the money if they secure a license, not before.

willing to take bold, aggressive actions to avoid the flood of applications it has received in the past.[62/]

C. Filing Fees.

55. In adopting the cellular RSA rules, the Commission properly acknowledged that "[a] larger filing fee would probably reduce the number of RSA applications filed". Third Report and Order, 2 FCC Rcd 2440, 2447 n.16 (1988). PacTel resoundingly agrees that higher filing fees hold great promise in reducing speculation. Unscrupulous application mills would be less successful in hawking filing opportunities as "get rich quick" schemes if investors had to lay out substantial money on the front end to participate.[63/] Also, insincere applicants with no wherewithal, and no business plan which would enable them to attract investor capital, would be less likely to participate if there was a substantial entry fee. Consequently, the single most effective mechanism the Commission could use to weed out insubstantial applicants would be to adopt an FCC filing fee

---

[62/] Requiring applicants to set aside cash or irrevocable letters of credit to demonstrate financial qualifications is not unprecedented. See Use of Radio Frequencies in the Land Mobile Satellite Service, 2 FCC Rcd. 2417 (1987)($5 million cash requirement for MSS participation); Comsat Corp, 40 FCC 2d 496 (1973)($1 million cash contribution for MARISAT).

[63/] Even if application mills syndicated these opportunities, serious applicants would be better off because fewer speculative applications would be filed (e.g., if the fees cause 10 speculators to join into a syndicate, 1 application is filed, rather than 100).

approach that will result in relatively high up-front filing fees. PacTel, as discussed below, has developed a fee proposal that meets the twin goals of deterring speculation and being within the Commission's statutory fee authority.

56. Attachment 3 hereto is a copy of a memorandum prepared by counsel to PacTel which describes in detail the Commission's authority for imposing application fees. Several important conclusions can be derived from this memorandum:

- The fees structure is set by statute. In establishing a fee with respect to a particular application proposal, the Commission must determine that the service properly falls within an existing fee category, or take steps to amend the statute in order to create a new category with respect to the new service.

- Generally, statutory fees are set to represent a rough approximation of average processing costs associated with a particular application.

- Historically, the Commission has charged fees for common carrier services on a per-transmitter basis, and has charged fees in the private radio services on a per-call sign basis. The Commission has some discretion to set application standards

which dictate the number of transmitter sites and/or the number of individual call signs which must be included in license applications.

Applying these conclusions, the narrowband PCS fees can be set at a sufficiently high level to discourage insincere applicants without creating a serious risk that the fee structure will be ruled to be unenforceable, and without precluding the entry of newcomers to the communications business.[64/]

57. The key, in PacTel's view, is to avoid setting a fee which bears no reasonable relationship to the information required from the applicant and the steps necessary to process the proposal. For example, assuming that narrowband PCS is to be regulated as a common carrier service, a fee of $230 per transmitter could be charged as an application fee, either by analogy to existing Part 22 services, or by adding a comparable new category to the statute as part of the Commission's periodic non-controversial amendments to communications legislation. However, the reasonableness of this fee is much more certain if (a) each applicant is required to identify specific transmitter

---

[64/] Legitimate entrepreneurs and start up businesses will not be precluded from participation by this approach. The fees PacTel envisions are small relative to the value of the license, and thus can be recouped as a modest cost of doing business in the business plan. Also, as later described, PacTel proposes that the lion's share of the fee only be retained from the winning applicant. This will facilitate financing. Finally, PacTel has no objection to adopting special provisions to accommodate minority owned and small businesses.

sites, (b) the Commission actually processes the applications, and (c) the Commission issues an authorization reflecting those transmitter sites. The reasonableness of the per transmitter fee is much less apparent if the applicant is not required to file detailed technical showings specifying particular transmitter sites.

58. Likewise, a filing fee based upon the number of transmitter sites projected to be included in a service area would be less sustainable if, at the same time, the Commission adopts a licensing scheme that relieves the applicant of any obligation to make periodic filings to establish such sites.[65/] Similarly, fees should not be charged on a per-transmitter basis to every applicant when, in fact, only the application of the lottery winner is processed.

59. Based upon the foregoing analysis, PacTel recommends that the Commission adopt a tiered fee structure with two components: a filing fee which includes a lottery fee component, and an application processing fee. PacTel will discuss each component separately.

[65/] For example, in the cellular arena the Commission is proposing to reduce the obligation of a licensee to notify the Commission of new transmitter sites within the CGSA. See Revision of Part 22 of the Commission's Rules, FCC 92-205, released June 12, 1992. If the Commission takes a similar approach with respect to narrowband PCS territories, it would be difficult to justify a filing fee based upon a projected number of transmitting locations that never would be reflected in applications to be processed by the Commission.

60. The filing fee would consist of an amount of money estimated by the Commission to reflect the costs of accepting the application, logging the application in, reviewing the application to ensure that it complies facially with the Commission's rules (e.g., does it have all the boxes checked, is it signed), assigning a file number to it, setting the application up for participation in a lottery proceeding, and conducting the lottery.[66/] Because every submitted application would be processed for inclusion in the lottery, this fee would

---

[66/] Many of these functions could be performed by a private organization designated by the Commission, much as the Mellon Bank logs in fee applications now. If, as PacTel recommends, the threshold application standards are strengthened to the point where more substantive application review is necessary to determine eligibility to participate in the lottery, the Commission could consider using one of the land mobile frequency coordinators, such as the National Association of Business and Educational Radio ("NABER"), to handle this function. The Lottery Fee, or a substantial portion thereof, could be paid directly to the outside organization, just as coordination fees in the private radio services are paid.

accompany every application[67] and generally not be subject to refund.[68]

61. The second fee, the application processing fee, would compensate the Commission for the work performed in processing (and, presumably, granting) the first-ranked application in the lottery.[69] This fee would be charged on a per-transmitter basis with reference to the current statutory fee schedule as a guide. Currently, the Commission charges an application fee of $230 per transmitter for Part 22 facilities. PacTel believes that this is an appropriate per-transmitter amount for narrowband PCS license processing because of the similarities in the services. See discussion supra at Section II.

---

[67] If, as suggested above, the Commission delegated some portion of the responsibility for conducting the threshold review to an outside organization, then that portion of the fee could be paid to the outside organization. However, the Commission itself should conduct the lottery since the selection process could be deemed an inherently governmental function not appropriate for contracting out. Thus, the portion of the fee reflecting the cost of conducting the lottery would be remitted to the agency with the application. The Commission would be entitled to set the fee based upon its best estimate of the number of applications that will be filed, even though the number cannot be predicted with certainty.

[68] The lottery fee component, however, would be refundable if the applicant dismissed its application before the lottery was conducted. See discussion infra at para. 62. This will accord applicants an opportunity to withdraw if the number of applications is too great to create a meaningful prospect of success.

[69] The actual engineering review could also be performed by an outside engineering firm under contract with the Commission. Because of the narrow scope of such a contract, the necessary procedures for defining and letting the contract could be satisfied without great difficulty.

62. As envisioned by PacTel, this second application processing fee ultimately would be paid only by the lottery winner. However, in order to expedite the licensing process, the Commission would collect the fee on the front end from every applicant, subject to a refund procedure.[70] The fee would be refundable in two instances. First, prior to the lottery an applicant could withdraw its application and request a refund of the application processing fee and the portion of the filing fee relating to the cost of conducting the lottery. (The applicant would, however, forfeit the bulk of the filing fee relating to the acceptance and logging in of the application.) This refund approach creates a mechanism for applicants who do not like their prospects for success based upon the number of pending applications to withdraw, thereby reducing the number of participants in each lottery and hopefully limiting lotteries to those with serious interest in becoming a licensee.[71] Second, an applicant could request a refund of the application processing

---

[70] Applicants should not be heard to complain about submitting this "contingent" fee. If applicants are submitting applications with a bona fide expectation of winning a license, then they should not object to paying the requisite fee. If they are not expecting to win the license, they simply shouldn't file.

[71] The current system does not permit applicants who have submitted applications from withdrawing their applications and receiving their money back after discovering that there is little chance for a license. The current situation is similar to going to a casino and betting on roulette without knowing the odds of winning. Few gamblers would undertake such a risk, and prudent businesses are loathe to take such risks as well, especially if the non-refundable fees are substantial.

fee if the application was not selected as the winning application in the lottery.

63. As is recognized by the Commission in the Notice, in adopting a $230 per transmitter fee, the Commission has some flexibility in specifying the number of transmitters which must be included in an initial license application. One approach -- the more conservative -- would be to charge the fee based upon the actual number of transmitters specified in the application. In order for such a fee to reach a sufficient level to deter speculators PacTel recommends that each applicant be required to propose enough transmitters to cover at least 75 percent of the population of the region and 50% of the geographic area.[72] Another approach -- the more aggressive -- would be to charge the fee based upon the theoretical number of transmitters it would take to provide coverage over the entire geographic region being license.[73] Using this approach, the Commission would take the square mileage of the geographic area being licensed and divide it by the amount of area covered by a typical transmitter. Using

---

[72] One serious drawback of this approach is that applicants will be incented to file for the least number of sites in order to reduce the application processing fee. The requirement that an applicant file for at least 75 percent of the population area mitigates this concern somewhat.

[73] A fee structure of this type would be more likely to be upheld if applicants were required to submit applications to add transmitter sites throughout the life of the system, with no further processing fees being charged. In effect, the licensee would be paying in advance for the processing services reasonably expected to pertain to the system.